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December 9, 2004

The Honorable Thad Cochran
Chairman
The Honorable Tom Harkin
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Bob Goodlatte
Chairman
The Honorable Charles W. Stenholm
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Animal and Plant Health Inspection Service:
Mexican Avocado Import Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture (USDA), Animal and Plant Health Inspection Service, entitled "Mexican Avocado Import Program" (RIN: 0579-AB81). We received the rule on November 30, 2004. It was published in the Federal Register as a final rule on November 30, 2004. 69 Fed. Reg. 69748.

The final rule amends to the regulations governing the importation of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico. Imported avocados may be distributed during all months of the year. For the first 2 years following the effective date of the rule, those avocados may be distributed in all states except California, Florida, and Hawaii. After 2 years the avocados may be distributed in all states.

Enclosed is our assessment of the USDA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the USDA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO

evaluation work relating to the subject matter of the rule is Lawrence J. Dyckman, Director, Food Safety/Agriculture Issues. Mr. Dyckman can be reached at (202) 512-9692.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Chief, Regulatory Analysis and
Development
Department of Agriculture

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
ENTITLED
"MEXICAN AVOCADO IMPORT PROGRAM"
(RIN: 0579-AB81)

(i) Cost-benefit analysis

The USDA performed a cost-benefit analysis of the final rule. USDA expects a welfare benefit across all regions of \$121.7 million and a net welfare benefit of \$50.3 million following the subtraction of \$71.4 million in welfare losses for California avocado producers. USDA expects a decrease in gross revenue for large and small avocado producers to be \$94.74 million.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The USDA performed a Final Regulatory Flexibility Analysis that discusses the number and sizes of the small entities that will be affected by the final rule including producers, handlers, and importers. USDA expects all small entities to benefit from the 2-year delay in importing to California, Florida, and Hawaii.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On May 24, 2004, the USDA published a Notice of Proposed Rulemaking in the Federal Register. 69 Fed. Reg. 29466. In response, 17,022 comments, including 11,000 form letters, were received and are discussed in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain any information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority found in 7 U.S.C. 450 and 7701-7772 and 21 U.S.C. 136 and 136a.

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.